

Decision No. C23-0170

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0416R

IN THE MATTER OF THE APPLICATION OF THE CITY OF GREELEY FOR AUTHORITY TO DESIGN AND IMPLEMENT HIGHWAY-RAIL GRADE CROSSING SAFETY IMPROVEMENTS ON THE UNION PACIFIC RAILROAD AT 13TH STREET (DOT NO. 804367T) IN THE CITY OF GREELEY, WELD COUNTY, COLORADO.

**INTERIM COMMISSION DECISION AFFIRMING
TIMELINE AND ADDRESSING FILING**

Mailed Date: March 9, 2023

Adopted Date: March 8, 2023

I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an objection filed on February 2, 2023, by Union Pacific Railroad Company (UPRR).

2. Through this decision, we discuss the filing and affirm that the front sheet and cost estimate must be filed by March 31, 2023.

B. Procedural History

3. A year and a half ago, the City of Greeley (Greeley) filed this Application requesting preliminary approval of plans for proposed changes at the 13th Street crossing.¹ UPRR intervened, neither contesting nor opposing the Application.

¹ National Inventory No. 804367T.

4. In October 2021, the Commission deemed the Application complete, agreed with the preliminary plans, and required the filing of a final application. The Commission also noted that Greeley was waiting for UPRR to provide the cost estimate and schematic diagram for the proposed change in signal equipment. While Greeley had expected the cost estimate and schematic diagram to be filed by October 1, 2021, UPRR had failed to provide either document. Still, Greeley indicated it would file the cost estimate and schematic as part of the final Application, and the Commission required Greeley to submit its final Application for review and ruling by December 31, 2021.²

5. The Commission did not receive the final information for the Application by December 31, 2021.

6. In September 2022, Greeley filed a Motion for Extension of Time to File Final Application. The Commission granted Greeley's Motion for Extension of Time, extending the deadline to March 31, 2023.³

7. In December 2022, Greeley made a compliance filing to file its final crossing plans and requested the Commission's assistance in requiring UPRR to provide the front sheet and cost estimate for the proposed crossing improvements, which UPRR still had not provided. By then, the front sheet and cost estimate were more than a year late. Greeley attached to its filing an email from UPRR's consultant, Richard A. Koerner of RailPros, asking Greeley to agree to pay the maintenance costs for the crossing before the project could be progressed (and the cost estimate and front sheet provided).

² See Decision No. C21-0655 ¶12.

³ Decision No. C22-0580, issued September 28, 2022.

8. In January 2023, the Commission affirmed the March 31, 2023 filing date for the required front sheet and cost estimate.⁴ The Commission pointed out that UPRR's position - that Greely pay for the maintenance of the crossing — contradicts both the statutory authorities outlined in § 40-4-106, C.R.S. and Commission Rule 4 CCR 723-7-7301(a) requiring that railroads maintain all active and passive warning devices at the railroad's expense for the life of the crossing.⁵

9. On February 2, 2023, UPRR filed an objection to Greeley's filing of the final plan and status of receipt of railroad cost estimate. In its objection, UPRR claims that the project has not moved forward because the railroad is waiting on Greely to respond to Mr. Koerner's email. It also points out that filing the cost estimate and front sheet by March 31, 2023, would result in delay to other crossing projects.

C. Discussion, Findings, and Conclusions

10. UPRR's story that it is waiting on a response to an email is nonsensical. UPRR has been on notice since December 2022 that Greely intended to move forward with the crossing design in its filed final plan and therefore that UPRR needed to provide a schematic diagram and cost estimate for that crossing design. At this point, the front sheet and cost estimate are 15 months late.

11. We are unmoved by UPRR's contention that it may need to delay its other crossing projects to provide Greely and this Commission the front sheet and cost estimate that were due 15 months ago. UPRR has known for months that this project has a March 31, 2023,

⁴ Decision No. C23-0003.

⁵ See Decision No. C21-0655 ¶19

deadline for provision of the diagram and estimate, and has provided no evidence that safety would be jeopardized by the need to provide the information by that date.

12. We affirm our determinations in Decision No. C22-0581 that UPRR is required to file the schematic diagram and cost estimate for the construction of this project in this proceeding by March 31, 2023, and deny UPRR's motion.

13. Finally, if UPRR fails to meet the March 31, 2023, deadline, Greely may wish to consider whether to initiate a complaint proceeding against UPRR under C.R.S. § 40-6-108.

II. ORDER

A. The Commission Orders That:

1. UPRR is required to file the cost estimate and schematic for this project by March 31, 2023.

2. The Commission retains jurisdiction to enter further decisions, as necessary.

3. This Decision is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
March 8, 2023.**

(S E A L)



ATTEST: A TRUE COPY

G. Harris Adams,
Interim Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners